

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTINA SMITH,

Plaintiff- Appellee,

v

DANBURY PARK MANOR, DENNIS, J.
VARIAN, SUGARBERRY APARTMENTS
CORP., and DPM ASSOCIATES LIMITED
PARTNERSHIP,

Defendant- Appellants.

UNPUBLISHED

June 23, 2000

No. 207152

Washtenaw Circuit Court

LC No. 95-002320 NO

Before: Gage, P.J., and White and Markey, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

I agree with Judge Markey that the trial court did not err in denying defendants' motion for summary disposition, curtailing defendants' voir dire of plaintiff's expert, qualifying plaintiff's expert, prohibiting defendants from introducing evidence pertaining to plaintiff's boyfriend's illegal activities, prohibiting Murphy's hearsay testimony regarding a township building inspector's statement, allowing evidence that the window guard was installed after the incident,¹ and denying defendants' requested special instruction.

As to the issue concerning the admission of testimony regarding statements made by partnership employees before Varian's involvement in the partnership, I cannot find an abuse of discretion where the testimony was ambiguous regarding the steps taken in the transition. Defendants' witness' testimony was ambiguous and indefinite, and defendant introduced no documents to support the construction of the testimony that would support a finding that there was a legal dissolution of one partnership and formation of another.

After a thorough review of the record, I must agree with Judge Gage that defendants' substantial rights, *Morrow v Bofferding*, 458 Mich 617; 581 NW2d 696 (1998), were affected by the introduction of considerable testimony regarding inadequate maintenance, HUD violations and tenant group activities that were irrelevant to the issues of the safety of the windows and the reasonableness of

defendants' conduct with respect thereto.² Although there was substantial admissible evidence in this case regarding notice and negligence apart from the evidence objected to by defendants',³ the evidence and argument directed to the HUD violations and allegations of general negligence and inaction in maintaining the premises was substantial and sustained, and affected defendants' substantial rights. I therefore agree that the case should be remanded for a new trial.

/s/ Helene N. White

¹ The trial court's reasoning in this regard was sound, and was not an abuse of discretion. Although, as pointed out, defendants' positions on the issues were somewhat inconsistent, defendants maintained that they had no duty or control with respect to the windows and that the devices that were installed, were installed by the tenants themselves. The later installation of the device by defendants' agents, even though asserted by defendants to have been by mistake, was thus relevant to the contested issue of control. Further, defendants argued that the window guards were not feasible in that they would impair ventilation and prohibit egress.

² I also agree that defendants' comments during opening testimony did not open the door to this irrelevant testimony.

³ There was evidence that defendants' own agent installed the devices when requested by tenants' soon after defendants assumed control of the premises.